



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 22-C0004]

Segway Powersports Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the *Federal Register* any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Segway Powersports, Inc., containing a civil penalty in the amount of \$5 million, with all but \$1.25 million suspended, subject to the terms and conditions of the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by [INSERT DATE 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Alberta Mills, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863-8938 (mobile); (301) 504-7479 (office); email: cpsc-os@cpsc.gov (<mailto:cpsc-os@cpsc.gov>).

FOR FURTHER INFORMATION CONTACT: Gregory M. Reyes, Supervisory Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; greyes@cpsc.gov (<mailto:greyes@cpsc.gov>) or 301-504-7220.

SUPPLEMENTARY INFORMATION: The Commission voted (4-0-1) to provisionally accept the proposed Settlement Agreement and Order pertaining to Segway Powersports Inc.

Chair Hoehn-Saric, Commissioners Baiocco, Trumka and Boyle voted to provisionally accept the Settlement Agreement and Order. Commissioner Feldman voted to take other action. The text of the Agreement and Order and Exhibit A to the Agreement appears below.

Abioye Mosheim,

Acting Secretary,

Consumer Product Safety Commission.

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| In the Matter of: |) | |
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| SEGWAY POWERSPORTS INC. |) | CPSC Docket No.: 22-C0004 |
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1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”), and 16 C.F.R. § 1118.20, Segway Powersports Inc. (“SPI”), and the United States Consumer Product Safety Commission (“Commission” or “CPSC”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

4. Between February 2021 and April 2021, SPI imported into the United States approximately 152 all-terrain vehicles (“ATVs”) that were not subject to an Action Plan approved by the Commission (the “Matter”).

5. The ATVs are “consumer products” that were “import[ed]” and “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5), (7), and (9) of the CPSA, 15

U.S.C. § 2052(a)(5), (7), and (9). SPI is a “manufacturer” and “distributor” of the ATVs, as such terms are defined in sections 3(a)(8) and (11) of the CPSA, 15 U.S.C. § 2052(a)(8) and (11).

6. Pursuant to section 42(a)(2)(B) of the CPSA, 15 U.S.C. § 2089(a)(2)(B), it is unlawful for any manufacturer or distributor to import into or distribute in commerce in the United States any new assembled or unassembled ATV unless “the ATV is subject to an ATV action plan . . . filed with and approved by the Commission”
7. ATV action plans focus on “promot[ing] the safe and responsible use of ATVs,” in particular, for children under age 16, and are defined in the CPSA as “a written plan or letter of undertaking that describes actions the manufacturer or distributor agrees to take to promote ATV safety, including rider training, dissemination of safety information, age recommendations, other policies governing marketing and sale of the ATVs, the monitoring of such sales, and other safety related measures, and that is substantially similar to the plans described under the heading ‘The Undertakings of the Companies in the Commission Notice’ published in the Federal Register on September 9, 1998.” 15 U.S.C. § 2089(e)(2); 63 Fed. Reg. 48,199–204 (Sept. 9, 1998).
8. Under section 42(a)(3) of the CPSA, the failure to comply with the ATV action plan requirement in section 42(a)(2)(B) “shall be deemed to be a failure to comply with a consumer product safety standard under [the CPSA] and subject to all of the penalties and remedies available under [the CPSA].” 15 U.S.C. § 2089(a)(3).
9. On numerous occasions, CPSC staff informed SPI that it could not import or distribute ATVs without an approved ATV action plan, and that such unlawful importation or distribution would subject SPI to enforcement actions and potential civil penalties.
10. Despite having knowledge that it was unlawful to import ATVs that were not subject to an approved ATV action plan on file with the Commission, SPI unlawfully imported eight separate ATV shipments.
11. SPI failed to comply with a consumer product safety standard under the CPSA by importing the ATVs, *see* 15 U.S.C. § 2089(a)(3), and knowingly violated section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, SPI is subject to civil penalties for its knowing violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1).

RESPONSE OF SPI

13. This Agreement does not constitute an admission by SPI to the charges set forth in paragraphs 4 through 12, including charges that SPI violated any statute or regulation, unlawfully imported ATVs, or knowingly violated the CPSA. In fact, SPI imported the ATVs based on its reasonable belief that the Action Plan initially submitted to CPSC in December, 2019, about 15 months before the importation, would be approved by the CPSC by the time the ATVs arrived at the ports of the United States. As soon as the shipments arrived while CPSC still had not yet approved the Action Plan, SPI voluntarily self-reported the importation and fully and timely cooperated with the inspection and other inquiries from the Commission. Further, SPI placed the ATVs in warehouses pending approval of the Action Plan, none of which has been distributed or sold and none of which has any alleged product defect or has caused any injury.

AGREEMENT OF THE PARTIES

14. Under the CPSA, the Commission has jurisdiction over the Matter involving the ATVs and over SPI.
15. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by SPI that it violated the CPSA.
16. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, SPI shall pay a civil penalty in the amount of five million dollars (\$5,000,000) ("Total Civil Penalty Amount"). In reliance on the accuracy and completeness of SPI's representations and warranties within this Agreement, the Commission agrees to suspend all but one million, two-hundred and fifty thousand dollars (\$1,250,000) of the Total Civil Penalty Amount (" \$1,250,000 Payment"), on the terms and conditions set forth in this Agreement. The \$1,250,000 Payment shall be paid in two equal installments, the first within thirty (30) calendar days after SPI receives service of the Commission's final Order accepting the Agreement, and the second within sixty (60) calendar

days of service of the final Order. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of SPI under this Agreement. Failure to make any payment by the dates specified in this paragraph shall constitute "Default," making the Total Civil Penalty Amount, plus any accrued and unpaid interest minus any penalty amounts paid by SPI, immediately due and payable, and may subject SPI to additional enforcement action under the CPSA.

17. The Commission's agreement to suspend part of the Total Civil Penalty Amount is expressly premised upon SPI's representations that the following financial documents, communications, and representations provided by SPI do not contain any untrue statement of a material fact or omit any material fact that is required to be stated therein or necessary in order to make the statement therein, true, accurate, and not misleading:

1. the sworn Affidavit of Shane Wilson signed on July 21, 2022, including the exhibits;
2. the sworn Affidavit of Meng Li signed on July 21, 2022, including the exhibits;
3. the sworn Affidavit of SPI signed on July 21, 2022; and
4. the Balance Sheet, Profit and Loss, and Statement of Cash Flows, all of SPI, submitted to Commission counsel Gregory M. Reyes on October 11, 2021 (collectively, "SPI's Representations").

18. If SPI failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in SPI's Representations, the suspension of the Total Civil Penalty Amount shall be lifted, and the entire \$5,000,000 Total Civil Penalty Amount shall become immediately due and payable.

19. The Commission or the United States may seek enforcement for any breach of, or any failure to comply with, any provision of this Agreement and Order in United States District Court, to seek

relief including, but not limited to, lifting the suspension of the Total Civil Penalty Amount and collecting amounts due.

20. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by SPI to the United States, and interest shall accrue and be paid by SPI at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter “Default Payment Amount” and “Default Interest Balance”). SPI shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and SPI agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. SPI shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney’s fees and expenses.
21. After staff receives this Agreement executed on behalf of SPI, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).
22. This Agreement is conditioned upon, and subject to, the Commission’s final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission’s final acceptance of this Agreement and service of the accepted Agreement upon

SPI, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

23. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon SPI and (2) the date of issuance of the final Order, for good and valuable consideration, SPI hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the Matter described in this Agreement:

1. an administrative or judicial hearing;
2. judicial review or other challenge or contest of the Commission's actions;
3. a determination by the Commission of whether SPI failed to comply with the CPSA and the underlying regulations;
4. a statement of findings of fact and conclusions of law; and
5. any claims under the Equal Access to Justice Act.

6. SPI shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by SPI, which shall contain the following elements:

1. written standards, policies and procedures concerning products sold by SPI in the United States, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;
2. procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
3. procedures requiring that information required to be disclosed by SPI to the Commission is recorded, processed, and reported in accordance with applicable law;

4. procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law;
5. procedures requiring that immediate disclosure is made to SPI's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, SPI's ability to record, process and report to the Commission in accordance with applicable law;
6. mechanisms to effectively communicate to all applicable SPI employees, through training programs or other means, compliance-related company policies and procedures to prevent violations of the CPSA;
7. a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
8. SPI's senior management responsibility for, and general board oversight of, CPSA compliance; and
9. retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

10. SPI shall submit a report under CPSA Section 16(b), sworn to under penalty of perjury:

1. describing in detail its compliance program and internal controls and the actions SPI has taken to comply with each subparagraph of paragraph 24;
2. affirming that during the reporting period SPI has reviewed its compliance program and internal controls, including the actions referenced in subparagraph (a) of this paragraph, for effectiveness, and that it complies with each subparagraph of paragraph 24, or describing in detail any non-compliance with any such subparagraph; and
3. identifying any changes or modifications made during the reporting period to the SPI's compliance program or internal controls to ensure compliance with the

terms of the CPSA and, in particular, the requirements of CPSA Section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance and Field Operations, Division of Enforcement and Litigation, for a period of three (3) years beginning 12 months after the Commission's final Order of acceptance of the Agreement. The first report shall be submitted 30 days after the close of the first 12-month reporting period, and successive reports shall be due annually on the same date thereafter. Without limitation, SPI acknowledges and agrees that failure to make such timely and accurate reports as required by this Agreement and Order may constitute a violation of Section 19(a)(3) of the CPSA.

4. Notwithstanding and in addition to the above, SPI shall promptly provide written documentation of any changes or modifications to its compliance program or internal controls and procedures, including the effective dates of the changes or modifications thereto. SPI shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials and personnel deemed necessary by staff to evaluate SPI's compliance with the terms of the Agreement.
5. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.
6. SPI represents that the Agreement:
 1. is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;
 2. has been duly authorized; and
 3. constitutes the valid and binding obligation of SPI, enforceable against SPI in accordance with its terms.
4. The signatories represent that they are authorized to execute this Agreement.
5. The Agreement is governed by the laws of the United States.

6. The Agreement and the Order shall apply to, and be binding upon, SPI and each of successors, transferees, and assigns; and a violation of the Agreement or Order may subject SPI, and each of successors, transferees, and assigns, to appropriate legal action.
7. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.
8. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

34. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

35. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and SPI agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(Signatures on next page)

SEGWAY POWERSPORTS INC.

Dated: July 21, 2022

By: _____
Kun Zhu
Segway Powersports Inc.
President

Dated: 7/21/2022

By: _____
Jennifer R. Coates, Partner
Catherine X. Pan-Giordano, Partner

Dorsey & Whitney LLP
Counsel to Segway Powersports Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary B. Murphy, Director

Dated: 7/21/2022

By: _____
Gregory M. Reyes, Supervisory Attorney
Nicholas J. Linn, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations

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| In the Matter of: |) | |
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| SEGWAY POWERSPORTS INC. |) | CPSC Docket No.: 22-C0004 |
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Upon consideration of the Settlement Agreement entered into between Segway Powersports Inc. (“SPI”) and the U.S. Consumer Product Safety Commission (“Commission” or “CPSC”), and the Commission having jurisdiction over the subject matter and over SPI, and it appearing that the Settlement Agreement is in the public interest, the Settlement Agreement is incorporated by reference and it is:

BY ORDER OF THE COMMISSION:

BY ORDER OF THE COMMISSION:

Alberta E. Mills, Secretary
U.S. Consumer Product Safety Commission

AFFIDAVIT OF CORPORATE OFFICER

I, the undersigned, swear and affirm that I am employed by Segway Powersports Inc. (“SPI”), that I hold the position indicated below, and, by reason of my position, I am authorized and qualified to make the following statements. All capitalized terms not defined in this affidavit shall have the meanings given to them in the Settlement Agreement between SPI and the U.S. Consumer Product Safety Commission (“CPSC”) dated the same date, of which this affidavit is a part:

1. SPI’s financial statements provided by SPI to the CPSC in connection with the matters addressed in the Settlement Agreement (the “Matters”) are complete, accurate and current, and fairly represent the financial conditions of SPI as of the dates, and for the periods, indicated therein, subject to the absence of notes as these financial statements are unaudited.
2. SPI has provided all available documents and information responsive to the CPSC’s requests in connection with the Matters.
3. The information provided by SPI to the CPSC in connection with the Matters do not, as of the date of the Settlement Agreement, and did not, at the time provided to the CPSC, contain any untrue statement of a material fact or omit any material fact required to be stated therein or necessary in order to make the statement therein, in light of the circumstances under which they were made, not misleading.
4. SPI has insufficient cash or other liquid assets to satisfy a civil penalty payment in excess of \$1,250,000. SPI has requested that its parent company, Ninebot Limited, or any of Ninebot’s affiliated entities loan or otherwise provide funds for SPI to pay CPSC the demanded civil penalty amount. SPI’s parent company and its affiliated entities have specifically declined SPI’s request. SPI has provided copies of those communications to CPSC staff in connection with the Matters.
5. SPI has attempted to obtain funding from multiple unaffiliated third-party lenders but has been unable to secure such funding. To my knowledge, SPI has provided copies of documents it submitted to the banks and communications from the banks regarding their decisions to CPSC staff in connection with the Matters.

6. To my knowledge, Ninebot Limited and its affiliated entities have not provided a parent guarantee, nor any other written representations of financial support on behalf of SPI, to any third-party lenders.
7. The entire penalty amount of \$1,250,000 will be paid solely by SPI, using funds available in SPI's own bank accounts at the time of the respective payments, and without any loans, funds, or other financial support from Ninebot Limited, any SPI or Ninebot Limited affiliated entities, or any other third-party, including but not limited to banks or other creditors, for this penalty.
8. Any civil penalty payment by SPI in excess of \$1,250,000 would cause SPI significant financial hardship and compel SPI to cease operations as an ongoing business.

I declare under penalty of perjury that the foregoing is true and correct. I understand that any intentional false statement in this declaration may be a criminal offense under 18 U.S.C. § 1001.

Executed on July 21, 2022

Signed by: _____

Kun Zhu

President, Segway Powersports Inc.